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HOUSE BILL 3002 By  
McAfee

SENATE BILL 3074  
By Ramsey

AN ACT to regulate certain water withdrawals from streams and  
aquifers and to amend Tennessee Code Annotated, Title  
69, Chapter 8, and Title 65, Chapter 27.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

Section 1. Tennessee Code Annotated Title 69, Chapter 8, is amended by adding the  
sections 2 through 9 as a new part.

Section 2. This Act shall be known as the "Inter-basin Water Transfer Act."

Section 3. The General Assembly finds that as the population and demand for water  
resources grow it is prudent to engage in planning for the future and to have a mechanism in  
place to provide some protection against the diversion of water from one basin to another before  
it happens. Although the common law addresses some of these concerns, it relies on after-the-  
fact litigation rather than a modern regulatory system. As this is remedial legislation, all sections  
of this Act shall be liberally construed to effectuate its purpose.

Section 4. All persons or entities granted powers by the state of Tennessee to acquire  
water, water rights and associated property by eminent domain or condemnation, or which have  
been granted rights to withdraw and use surface or ground water for non-riparian purposes, or  
which acquire or supply water for the use or benefit of public water supply systems as defined in

Title 68, Chapter 221, Section 703, shall, when withdrawing water for the purpose of transferring and/or diverting it between drainage basins, first obtain a permit from the Commissioner of Environment and Conservation, or his/her designee, prior to such diversion or transfer.

Section 5. In addition to powers under all other statutes, including but not limited to the Water Quality Control Act, T.C.A. §§69-3-101 et seq., and the Safe Drinking Water Act, T.C.A. §§68-221-701 et seq., the Commissioner of Environment and Conservation, or his/her designee, shall have the following powers and duties under this Act:

- (a) to issue and to deny inter-basin transfer permits in accordance with section 6;
- (b) to issue civil penalty assessments in accordance with section 8;
- (c) to conduct inspections and investigations;
- (d) to bring suit in the name of the Department for any violation of the provisions of this Act including seeking any remedy available under this Act as well as under any other statutory or common law remedy related to water availability and supply;
- (e) to require the submission of plans, specifications, technical reports, and any other information he/she deems necessary to carry out the provisions of this Act;
- (f) to delegate any of his duties to the director of the appropriate Division under his supervision; and
- (g) to be the primary administrative agent in carrying out the provisions of this Act.

Section 6. (a) The Commissioner shall issue or deny any permit applied for pursuant to section 3 in accordance with the provisions of this Act and the rules adopted by the Water Quality Control Board under section 6 and any applicable provisions of the Water Quality Control Act, T.C.A. §§69-3-101 et seq., and rules thereunder. Such permits shall contain necessary and appropriate conditions to accomplish the purposes of the same Acts and rules.

(b) Any person aggrieved by the denial of a permit or the imposition of a permit condition may appeal such matter to the Water Quality Control Board by filing an appeal petition with the Commissioner within thirty (30) days of the issuance or denial of the permit.

Section 7. In addition to powers under all other statutes, including but not limited to the Water Quality Control Act, T.C.A. §§69-3-101 et seq., and the Safe Drinking Water Act, T.C.A. §§68-221-701 et seq., the Water Quality Control Board, created by T.C.A. §69-3-104, shall have the following powers and duties under this Act:

(a) to promulgate rules to be effective by October 1, 2000 to effectuate the purposes of this Act including but not limited to:

(1) defining necessary terms, including but not limited to, "basin";

(2) setting criteria for permit issuance and denial as well as for permit conditions, taking into account all appropriate factors including, but not limited to, existing uses downstream of a proposed withdrawal, low flow conditions, classified uses of the stream under the Water Quality Control Act, climactic conditions, and quantity of a proposed withdrawal; and

(3) procedures for permit issuance, including opportunity for public comment and public hearings.

(b) to hear appeals from assessments of civil penalty assessments; and

(c) to hear appeals from permit applicants over conditions imposed or permits denied.

Section 8. (a) The Commissioner may assess civil penalties for any violation of this Act of \$100 to \$1,000 per day per violation. In making such assessments, the Commissioner shall consider all appropriate factors including without limitation, whether the violation was knowing or intentional, any actual harm to people or the environment resulting from the violation or activity, the potential for harm to people or the environment posed by the violation or activity.

(b) Any civil penalty shall be assessed in the following manner:

(1) The Commissioner may issue an assessment against any person or entity responsible for the violation.

(2) Any person or entity against whom an assessment has been issued may secure a review of such assessment by filing with the Commissioner a written petition setting forth the grounds and reasons for the objections, and asking for a hearing on the matter involved before the board. If a petition for review of the assessment is not filed within thirty (30) days after the date the assessment is served, the violator shall be deemed to have consented to the assessment and it shall become final.

(c) All fees, penalties, and damages assessed and collected under the provisions of this part shall be administered in the same manner as provided in the Environmental Protection Fund Act, T.C.A., §68-203-101.

Section 9. The state of Tennessee's grant of power to acquire water, water rights, and associated property by eminent domain, condemnation, or through bestowing of rights to withdraw and use water for non-riparian purposes, and for the use or benefit of public water supply, shall be limited to uses that benefit the citizens of Tennessee.

Section 10. Tennessee Code Annotated §65-27-101 is amended by designating the existing language as subsection (a) and by adding the following sentence as subsection (b):

Any exercise of the power to condemn granted under this section, including any continuing grant to withdraw water for non-riparian use, that is not for the benefit of the citizens of Tennessee, as determined by the Commissioner or his/her designate, shall be unlawful and void.

Section 11. This Act shall take effect upon becoming a law, the public welfare requiring it.